

JESSE FOSTER,	:	Order Affirming Decision
Appellant	:	
v.	:	
	:	Docket No. IBIA 94-105-A
JUNEAU AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 27, 1995

This is an appeal from a March 25, 1994, decision issued by the Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA), rejecting appellant's claim to an ownership interest in the Hagemeister Island reindeer herd.

The Area Director's decision stated:

We have reviewed old Department of the Interior files concerning the herd. From that review, we have concluded that while you were apparently involved in herding the reindeer when they were first placed on Hagemeister Island, that you had withdrawn from the enterprise by 1967. At that time you wrote to the Bureau of Land Management (BLM) declining to remain on the grazing permit and stating that you were no longer involved in the herding partnership. Enclosed is a copy of the June 8, 1967 letter to you from BLM concerning the annual grazing permit and a copy of your response asking that you be removed from further involvement with the permit. If you have documentary evidence which is to the contrary demonstrating that you retained an interest in the herd, we would be most interested in having an opportunity to review it.

Based upon the evidence available to us at this time however, we conclude that you had renounced whatever interest you had in the herd by 1967, and we must therefore reject your claim to an interest in the herd.

The Area Director informed appellant that he could appeal the decision to this Board. Appellant did so.

On appeal to the Board, appellant furnishes no documentary evidence of his ownership interest in the herd. He contends, however, that he had an interest in the herd and that he never formally transferred his interest to anyone else.

The history of this matter is now somewhat obscure, owing in part to the apparent loss of certain documents. As explained by the Area Director in a June 26, 1995, letter to the Board, "reindeer operations were rather

informal back in the ‘Sixties.’” The Area Director states that the first reindeer were moved to Hagemeister Island in 1965 and that the first “Agreement to Reimburse for Reindeer” for the Hagemeister Island herd was made that year between BIA and Alaska Native reindeer herders. 1/ The Area Director also states, however, that no copy of the original agreement can now be located by BIA, BLM, or the Fish and Wildlife Service. Therefore, there is no way of knowing for certain whether appellant signed that agreement as a borrower.

It appears that BLM issued a grazing permit for the Hagemeister Island herd on or before December 29, 1966, and that appellant's name appeared on the permit. The Area Director states: "In the original application for a BLM grazing permit, the signers were Christopher Sharp, Jack Gosuk, and Christian Bavilla. By the time the permit was issued, Sharp had apparently dropped out and been replaced by [appellant]" (Area Director's June 26, 1995, Letter at 1). The Area Director does not furnish copies of the application or the permit. Nor does he indicate the dates of those documents. However, appellant's permit had evidently been issued by December 29, 1966, when BLM wrote to appellant about his reporting requirements under the permit.

On June 8, 1967, BLM again wrote to appellant about his grazing permit, stating that appellant's required report had not been received and further stating that, unless he submitted the report within 30 days, his permit would be cancelled. On July 7, 1967, appellant responded. His letter, as far as the Board can decipher it, states: "I do not wish to [illegible] for a permit as tho[?] I am partner in reindeer business. My partners have already replace me. So you must send the permit to Jack[?] Nickolai[?]. I turn over my share to him as of now." 2/

Another "Agreement to Reimburse for Reindeer" for the Hagemeister Island herd was signed by Jack Gosuk and Christian Bavilla as borrowers on April 30, 1968, and approved by the Area Director on May 7, 1968. The Area Director furnishes a copy of this agreement and states that it was the second agreement concerning the herd. The agreement shows that it covered the original herd moved to the island in 1965 as well as a second herd moved to the island in 1967. Appellant's name does not appear on the 1968 agreement in any capacity.

In his filings with the Board, appellant concedes that he intended in 1967 to relinquish his rights to the Hagemeister Island herd. He states, however, that no formal papers were prepared, and therefore no legal transfer ever took place. He submits a letter from Christopher Sharp which states that he (Sharp) had turned over his ownership interest to appellant and that formal papers were prepared for that transfer. Appellant contends that similar papers should have been prepared for the transfer of his (appellant's) interest to Nickolai(?).

1/ The “Agreement to Reimburse for Reindeer” is a BIA form agreement. Its contents are discussed below.

2/ According to the Area Director, appellant's letter was written on the back of the BLM letter. The record copy is difficult to read in places. However, the signature is legible and resembles the signature on filings appellant has made with the Board.

Neither appellant nor Sharp further describes the document which memorialized the transfer of an interest from Sharp to appellant. Nor does either produce a copy of the document. The Area Director states that there is no method for transferring interests in reindeer other than the “Agreement to Reimburse for Reindeer.” It appears possible, therefore, that the transfer from Sharp to appellant was accomplished through the execution of an amendment to the original agreement which, like the original agreement itself, is now missing.

Despite the absence of any formal document showing that appellant received an interest in the reindeer herd, it is fair to assume, in light of the fact that BLM issued a grazing permit to him, that appellant did receive such an interest. For purposes of this decision, the Board assumes that appellant received an interest either through the original agreement or through an amendment to the original agreement. The Board also assumes that appellant never signed a document formally relinquishing his interest in the herd.

Given these assumptions, the question is whether appellant retained an interest in the herd despite his stated intent to relinquish his interest and despite the fact that he neither participated in the herding operations nor, apparently, expressed any interest in the herd in the 26½ years between July 1967 and February 1994, when he submitted his claim of ownership to BIA. 3/

BIA's reindeer operations are conducted under authority of the Reindeer Industry Act of 1937, 25 U.S.C. §§ 500-500g (1994). 4/ 25 U.S.C. § 500g provides:

The Secretary of the Interior is authorized to distribute the reindeer and other property acquired by the United States under this subchapter among the Eskimos or other natives of Alaska, or to corporations, associations, or organizations of said natives, either in the form of gifts or under such conditions as the Secretary of the Interior may prescribe, and to execute and deliver appropriate instruments of title, or to hold and use the same in trust for the use and benefit of said natives, with a view of effecting the widest possible distribution of such reindeer and other property among those natives of Alaska who are in need thereof and who can make proper use of the same.

In implementing this authority, BIA developed the form “Agreement to Reimburse for Reindeer.” Under the form agreement, the borrower receives a specified number of reindeer from the Government and agrees to manage those reindeer and their progeny for a specified period, after which he agrees to return to the Government the same number of reindeer as he originally

3/ Appellant states that his intent is to seek damages in Federal court for the removal of reindeer from Hagemeister Island. Cf. Gosuk v. Juneau Area Director, 25 IBIA 62 (1993).

4/ For a discussion of the history and purposes of the Reindeer Industry Act, see Reindeer Herders Ass'n v. Juneau Area Director, 23 IBIA 28, 99 I.D. 219 (1992).

received, retaining the balance of the herd as his private property. 5/ During the period of the loan, the borrower's own reindeer, as well as the progeny of the loaned herd, are to constitute security for the loan. The loaned reindeer are to be held in trust for the borrower, as are the reindeer which are to become the private property of the borrower at the conclusion of the agreement. 6/

By stating that the loaned reindeer are to be held in trust for the borrower, the agreement might be seen as indicating that the loaned reindeer actually become the property of the borrower at the time the agreement is executed. When the agreement is read in its entirety, however, it becomes clear that those reindeer, or their equivalent number, remain the property of the United States throughout the term of the agreement. 7/

Read in its entirety, the agreement also makes clear that the borrower is not simply the recipient of a gift of reindeer. Rather, the borrower assumes a number of obligations in return for the loan of reindeer and the promise of the Government that the increase in the herd will become his private trust property. For example, paragraph 1 provides:

In return for receiving the above described reindeer, I agree to manage them, together with their offspring and any reindeer now owned by me and their offspring, in a careful manner at my own expense, on whatever lands the Secretary of the Interior or his duly authorized representative may permit the grazing of such animals.

5/ The Area Director states that “[t]he standard BIA reindeer loan is for a period of seven years, when the herd will presumably have increased so that the loanee can repay the original number of deer loaned, and still have a herd left for himself” (Area Director's June 26, 1995, letter at 2).

6/ Paragraph 1 of the agreement provides in part: “I agree that the above animals, which are owned by the United States, will be held in trust by the United States for me.”

Paragraph 6 provides:

“After I have returned to the Government the number of reindeer obtained from the Government according to this agreement, the balance of the reindeer shall be my private property, provided that all reindeer acquired by me under this agreement and all their offspring shall continue to be held in trust after the repayments have been made as provided for in this agreement until the Area Director turns them over to me without any restrictions.”

7/ The fact that the progeny of the loaned reindeer are to serve as security for the loan suggests that the borrower acquires some interest in the progeny during the term of the agreement. The borrower clearly acquires an interest sufficient to pass on to his heirs if he dies while the agreement is still in effect. Paragraph 5 provides:

“If I should die during the term of this agreement, the reindeer shall be transferred to my heirs if in the opinion of the Area Director they are able to handle the reindeer and if they agree to take them; otherwise this agreement shall no longer be in effect and my heirs shall receive whatever reindeer are left after my debt to the Government has been paid.”

Paragraph 3 provides in part: "I hereby agree that the reindeer will be herded constantly and that any other actions necessary to protect and preserve the herd will be taken."

Appellant abandoned his obligations under the agreement in 1967. If he did not formally relinquish his rights in the herd, as he says he did not, he must be deemed to have breached the agreement by failing to carry out his obligations under it. The Board concludes that, by abandoning his obligations for the management of the Hagemeister Island herd, appellant gave up any rights he may have had in the herd.

This conclusion is especially warranted in light of the fact that, as noted above, a new agreement, covering the same reindeer herd as the original agreement, was entered into on April 30, 1968, and approved by BIA on May 7, 1968. Appellant should have made his claim of ownership rights in the herd at that time, before the borrowers under the 1968 agreement undertook to perform their obligations under that agreement. To now recognize appellant as having ownership rights in the herd would be to infringe upon the rights of the borrowers under the 1968 agreement. This the Board will not do.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's March 25, 1994, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge